WP(C) 1396/2005
BEFORE
THE HON'BLE MR JUSTICE A B PAL

Heard Mr B D Konwar, learned counsel appearing for the petitioner. Also heard Mr S K Das, learned Standing counsel, appearing for the respondent Nos. 1 & 2. None is present for the respondent Nos. 3 to 5 who have chosen not to enter appearance and contest this case even after duly served.

2. The material facts giving rise to the present proceeding may briefly be noticed thus:

The petitioner who has gone on superannuation on 30.6.2007, during the pendency of the present proceeding, was originally appointed to the post of Lower Division Clerk, in Bongaigaon College, Bongaigaon in the year 1973. He was promoted to the post of Upper Division Assistant in 1975 and then to the post of Supervisory Assistant in the year 1986. The said Institution has the status of deficit grant-in-aid of the Govt. of Assam managed by a Governing Body (3rd respondent herein) in accordance with the provisions of Assam Aided College Management Rules, 1976, and Assam Non-Government College, Management Rules, 2001.

The petitioner was placed under suspension w.e.f. 1.2.1999 by the Principal and Secretary of the said College initiating disciplinary proceeding on four definite charges of (a) (i) unauthorised leave; (ii) negligence of duty; (iii) insubordination and (iv) Mis-conduct. The said proceeding was dragged for quite a long period with the petitioner under suspension. This Court by order dated 30.4.2001 in MC No. 371/1999, arising out of WP(C) No. 1164/1999, directed that the authority should complete the Departmental Proceeding within a period of 6 months failing which, the order of suspension will automatically stand quashed. By virtue of the said order of this Court the suspension order of the petitioner stood terminated on 31.10.2001 and therefore, he was to be reinstated to the post of Supervisory Assistant. Meanwhile, on 22.5.2001, the inquiry was concluded by the Enquiry Officer, a copy of which was supplied to the petitioner for his response. Accordingly, the petitioner submitted his representation with regard to the said Inquiry report on 3.7.2001. The Governing Body of the said College in its meeting dated 13.12.2002 considered the inquiry report and the representation of the petitioner and resolved to reinstate the petitioner to the post of Upper Division Assistant, a grade lower than the post held by him before initiation of the proceeding, with effect from the date of approval of the Director of Higher Education, Assam. It was further resolved that the period of suspension of the petitioner would be treated as on duty. He was warned severely not to repeat the malpractices in the future failing which his services would be terminated.

The said resolution to reinstate him to the post of Upper Division Assistant could not be given effect as the same did not receive approval of the Director of Higher Education, Assam. Thereafter, the Governing Body of the said Institution in another meeting dated 30.8.2004 resolved to reinstate the petitioner to a further lower post of Lower Division Assistant, 2 grades lower than the post held by him at the time of initiation of the disciplinary proceeding. That resolution, which is under challenge in the present proceeding, has also not received approval of the Director of Higher Education, Assam apparently due to pendency of the present proceeding.

By means of this writ petition the petitioner is calling into question the correctness and legality of the resolution dated 30.8.2004 and sought for a direction to the Director of Higher Education, the concerned respondent, to approve the said resolution dated 30.8.2004. He has further sought a direction to the respondent concerned to clear his dues for the entire period of suspension and full pay and allowances for the period from the day he was deemed to have been reinstated in service by virtue of the order of this Court passed on 30.4

.2001, as aforementioned.

4. The respondents have chosen not to file counter affidavit. As I have already stated above, the authorities concerned of the Institution have not entered appearance to contest the present proceeding. The State of Assam and the Director of Higher Education, who are respondent Nos. 1 and 2, have been represented by Mr S. K. Das, learned Standing Counsel, whose only submission is that the first resolution of the Governing Body to reinstate the petitioner to the post of Upper Division Assistant could not be approved at the relevant time as there was no such sanctioned post. As regards the second resolution to reinstate the petitioner to the post of Lower Division Assistant, the learned Standing Counsel has placed for my perusal a copy of the instruction of the Director of Higher Education, Assam which speaks that the approval could not be given due to pendency of the present proceeding.

5. From what has been noticed above, it would appear that the petitioner was to be reinstated in service with the expiry of 6 months from 30.4.2001 when this Court passed an order that on failure to complete the disciplinary proceeding within 6 months, the suspension would stand quashed. The fact remains that on or before 30.10.2001, when the petitioner should have been reinstated, the respondent concerned failed to pass any order leading to the only presumption that the petitioner stood reinstated to the post of Supervisory Assistant w.e.f. 31.10.2001. Consequently, he is entitled to claim full pay and allowances from the day of such deemed reinstatement in service from 31.10.2001. It is also to be noticed that the first resolution of the Governing Body to reinstate the petitioner to the post of Upper Division Assistant came into effect on 13.12.2002 which again lapsed as it did not receive approval of the Director of Higher Education, Assam. The second resolution dated 30.8.2004 to reinstate him to the post of Lower Division Assistant has also met the same fate as it also did not receive approval of the Director of Higher Education, Assam. Thus the petitioner, after his deemed reinstatement from 31.10.2001, retired from service on 30.6.2007. It is of material significance to note here that the Principal of the Bongaigaon College issued a superannuation letter to the petitioner addressing him as a Supervisory Assistant meaning thereby that the petitioner was treated as Supervisory Assistant at the time of his retirement.

6. From the above uncontroverted position, it can be safely held that (1) the petitioner is entitled to full pay and allowances admissible for holding the post of Supervisory Assistant for the entire period from his deemed reinstatement on 31.10.2001 till the day of his retirement; (2) the Governing Body in its first resolution dated 13.12.2002 resolved that the suspension period of the petitioner would be treated as on duty. As there is no further resolution about pay and allowances admissible during the period of suspension, it is to be held that he would be entitled to full pay and allowances, minus subsistence allowances paid unless there is any specific order or decision of the competent authority to the contrary, in terms of the provisions of the fundamental rules; (3) the first resolution dated 13.12.2002 to reinstate the petitioner to the post of Upper Division Assistant is undoubtedly a penalty of reduction in rank i.e. one stage below the position held by him at the time of initiating the disciplinary proceeding. This being the decision consciously taken on the basis of the inquiry report, it cannot be modified for further reduction in rank only because at the relevant time no post of UDA was available for his reinstatement. In view of this position, the second resolution dated 30.8.2004 imposing another penalty of reduction in rank to the post of Lower Division Assistant is unsustainable in law and though the same also has not received approval of the Director of Higher Education, Assam, for pendency of this proceeding, in my considered view that resolution is not legally tenable and therefore, is set aside and quashed.

7. The writ petition is allowed to the extent indicated above.

The concerned respondents shall within a period of 3 months from today, complete the entire exercise in terms of the directions aforementioned.

No cost.